

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOD SUPER FAST PIZZA, LLC, a Delaware  
corporation,

Plaintiff,

v.

CARL CHANG, et al.

Defendants.

CASE NO. 12-CV-01359-TSZ

**PIEOLOGY FRANCHISE, LLC'S  
ANSWER TO SECOND AMENDED  
COMPLAINT**

**JURY DEMAND**

AND RELATED COUNTERCLAIMS

Defendant Pieology Franchise, LLC ("Franchise"), for itself and for no other defendant, hereby submits its Answer to plaintiff MOD Super Fast Pizza, LLC's ("MOD") Second Amended Complaint (the "Complaint"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

1. Franchise admits that MOD purports to bring claims for trade dress infringement, misappropriation of trade secrets, and tortious interference with contractual relations, breach of

1 contract, civil conspiracy, and permanent injunctive relief, but denies that MOD's claims have any  
2 merit.

3 2. Franchise admits that LBBP owns and operates pizza restaurants in Southern  
4 California under the name "Pieology Pizzeria." Franchise admits that Pieology Pizzeria is not  
5 connected to, affiliated with, or authorized by MOD. Except as expressly admitted and alleged  
6 herein, Franchise denies each and every allegation contained in the corresponding paragraph of the  
7 Complaint.

### 8 I. PARTIES

9 1. Franchise lacks sufficient knowledge or information regarding the allegations  
10 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
11 denies all such allegations.

12 2. Franchise admits that Carl Chang is a resident of Southern California. Except as  
13 expressly admitted and alleged herein, Franchise denies the allegations contained in the  
14 corresponding paragraph of the Complaint.

15 3. Franchise lacks sufficient knowledge or information regarding the allegations  
16 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
17 denies all such allegations.

18 4. Franchise admits that Pieology Spectrum, LLC is a limited liability company  
19 organized under the laws of the State of Delaware, with its principal place of business in Rancho  
20 Santa Margarita, California. Except as expressly admitted and alleged herein, Franchise denies the  
21 allegations contained in the corresponding paragraph of the Complaint.

22 5. Franchise admits that The Little Brown Box, LLC ("LBBP") is a limited liability  
23 company organized under the laws of the State of Delaware, with its principal place of business in  
24 Rancho Santa Margarita, California. Franchise admits that Pieology Spectrum, LLC is wholly-  
25 owned by Franchise. Except as expressly admitted and alleged herein, Franchise denies the  
26 allegations contained in the corresponding paragraph of the Complaint.

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6. Franchise admits that Pieology Franchise, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. Franchise admits that Pieology Franchise, LLC is wholly-owned by LBBP, which is its sole member. Except as expressly admitted and alleged herein, Franchise denies the allegations contained in the corresponding paragraph of the Complaint.

## **II. JURISDICTION AND VENUE**

1. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Franchise. To the extent a response is required, Franchise admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint.

2. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Franchise. To the extent a response is required, Franchise denies that venue is proper in this judicial district.

3. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Franchise. To the extent a response is required, Franchise denies the allegations contained in the corresponding paragraph of the Complaint.

## **III. FACTS**

### **CREATION AND DEVELOPMENT OF MOD'S**

#### **TRADE DRESS AND TRADE SECRETS.**

1. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

2. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

3. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

1           4. Franchise lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
3 denies all such allegations.

4           5. Franchise denies that MOD restaurants feature a distinctive, non-functional  
5 combination of design, look, feel, menu, and style of service. Franchise lacks sufficient knowledge  
6 or information regarding the remaining allegations contained in the corresponding paragraph of the  
7 Complaint to admit or deny, and, on that basis, denies all such allegations.

8           6. Franchise denies that MOD owns any protectable trade dress. Franchise denies that  
9 MOD uses a distinctive, non-functional combination of features. Franchise lacks sufficient  
10 knowledge or information regarding the remaining allegations contained in the corresponding  
11 paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

12           7. Franchise admits that the articles quoted in the corresponding paragraph of the  
13 Complaint in all respects speak for themselves. Franchise denies that MOD owns any protectable  
14 trade dress. Franchise denies that the “recognition and popularity of the MOD trade dress is  
15 evident” from the articles quoted in the corresponding paragraph of the Complaint. Franchise lacks  
16 sufficient knowledge or information regarding the remaining allegations contained in the  
17 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
18 allegations.

19           8. Franchise denies each and every allegation contained in the corresponding paragraph  
20 of the Complaint.

21           9. Franchise lacks sufficient knowledge or information regarding the allegations  
22 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
23 denies all such allegations.

**DEFENDANTS' BACKGROUND WITH MOD**

10. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

12. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

13. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

14. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

15. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

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1           18. Franchise lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
3 denies all such allegations.

4           19. Franchise lacks sufficient knowledge or information regarding the allegations  
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
6 denies all such allegations.

7           20. Franchise lacks sufficient knowledge or information regarding the allegations  
8 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
9 denies all such allegations.

10          21. Franchise lacks sufficient knowledge or information regarding the allegations  
11 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
12 denies all such allegations.

### 13                                   **DEFENDANTS' UNLAWFUL ACTIVITIES**

14          22. Franchise admits that Pieology Spectrum, LLC was formed in March 2010.  
15 Franchise lacks sufficient knowledge or information regarding the remaining allegations contained  
16 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
17 allegations.

18          23. Franchise lacks sufficient knowledge or information regarding the allegations  
19 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
20 denies all such allegations.

21          24. Franchise admits that Pieology Pizzeria in Fullerton, California opened in 2011.  
22 Franchise denies utilizing, relying on, sharing, taking advantage of, exploiting, or communicating to  
23 third parties any confidential information or trade secrets belonging to MOD. Franchise lacks  
24 sufficient knowledge or information regarding the allegations contained in the corresponding  
25 paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

26          25. Franchise admits that James Markham is not a member of Franchise, and that he has  
27 no ownership interest in or professional role with Pieology Pizzeria. Franchise admits that Carl

1 Chang has an ownership interest in Franchise, and Pieology Pizzeria, and that he is involved in the  
 2 operation of the same. Franchise denies that it is engaging in the “unauthorized exploitation of  
 3 MOD’s intellectual property, including its trade dress, trade secrets, [or] confidential information.”  
 4 Franchise lacks sufficient knowledge or information regarding the allegations contained in the  
 5 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
 6 allegations.

7 26. Franchise admits that the Pieology website states that, *inter alia*, “Pieology prides  
 8 itself on providing the best tasting, healthiest kustom pizza in the world. Using only the freshest  
 9 ingredients, Pieology provides smoking hot pizzas in under 5 minutes.” Franchise further admits  
 10 that the Pieology website in all respects speaks for itself.

11 27. Franchise denies that Pieology’s design, look, feel, menu, and/or style of service are  
 12 confusingly similar to MOD’s restaurants.

13 A. Franchise admits that Pieology offers individualized pizzas, made to order,  
 14 cooked at a temperature sufficient to cook a pizza in approximately five minutes, in ovens visible to  
 15 the customer, and served within approximately five minutes. Franchise lacks sufficient knowledge  
 16 or information about MOD’s restaurants to admit or deny the allegations regarding MOD’s  
 17 restaurants, and, on that basis, denies those allegations. Except as expressly admitted and alleged  
 18 herein, Franchise denies the allegations contained in the corresponding paragraph of the Complaint.

19 B. Franchise admits that Pieology offers plain cheese pizza at one price, and that  
 20 it offers pizzas with unlimited toppings at a second price. Franchise lacks sufficient knowledge or  
 21 information about MOD’s restaurants to admit or deny the allegations regarding MOD’s restaurants,  
 22 and, on that basis, denies those allegations.

23 C. Franchise admits Pieology offers seven pizzas with pre-determined toppings,  
 24 that it identifies these pizzas by number, and that six of these pizzas are the same price as pizza with  
 25 unlimited toppings. Franchise admits that the Pieology’s #3 pizza has bbq sauce, chicken,  
 26 mozzarella, gorgonzola, red onion, and cilantro. Franchise lacks sufficient knowledge or  
 27 information about MOD’s restaurants to admit or deny the allegations regarding MOD’s restaurants,

1 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein,  
2 Franchise denies the allegations contained in the corresponding paragraph of the Complaint.

3 D. Franchise admits that Pieology offers “strips” made from pizza dough and  
4 topped with either herb butter or a cinnamon sugar sauce. Franchise lacks sufficient knowledge or  
5 information about MOD’s restaurants to admit or deny the allegations regarding MOD’s restaurants,  
6 and, on that basis, denies those allegations. Except as expressly admitted and alleged herein,  
7 Franchise denies the allegations contained in the corresponding paragraph of the Complaint.

8 E. Franchise admits that Pieology offers salads. Franchise lacks sufficient  
9 knowledge or information about MOD’s restaurants to admit or deny the allegations regarding  
10 MOD’s restaurants, and, on that basis, denies those allegations.

11 F. Franchise denies each and every allegation contained in the corresponding  
12 paragraph of the Complaint.

13 G. Franchise denies each and every allegation contained in the corresponding  
14 paragraph of the Complaint.

15 H. Franchise admits that, at one time, Pieology sold individually wrapped  
16 Hostess “Ding Dongs” for \$1.00. Franchise admits that Pieology displayed the Ding Dongs on a  
17 circular place near the cash register. Franchise lacks sufficient knowledge or information about  
18 MOD’s restaurants to admit or deny the allegations regarding MOD’s restaurants, and, on that basis,  
19 denies those allegations. Except as expressly admitted and alleged herein, Franchise denies the  
20 allegations contained in the corresponding paragraph of the Complaint.

21 I. Franchise admits that Pieology serves its pizzas on a round tray lined with  
22 paper with the customer’s name written in black marker, and that a server shouts the customer’s  
23 name when an order is ready. Franchise lacks sufficient knowledge or information about MOD’s  
24 restaurants to admit or deny the allegations regarding MOD’s restaurants, and, on that basis, denies  
25 those allegations. Except as expressly admitted and alleged herein, Franchise denies the allegations  
26 contained in the corresponding paragraph of the Complaint.



1 J. Franchise lacks sufficient knowledge or information about the allegations in  
2 the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such  
3 allegations.

4 28. Franchise denies each and every allegation contained in the corresponding paragraph  
5 of the Complaint.

6 29. Franchise lacks sufficient knowledge or information regarding the allegations  
7 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis,  
8 denies all such allegations.

9 30. To the extent that the allegations in the corresponding paragraph of the Complaint  
10 are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge  
11 or information regarding the remaining allegations contained in the corresponding paragraph of the  
12 Complaint to admit or deny, and, on that basis, denies all such allegations.

13 31. Franchise admits that the Pieology website states that it is “fast expanding.”  
14 Franchise admits that it is pursuing opportunities for additional locations and potential franchise  
15 opportunities, and further admits that Franchise has entered into franchise agreements and  
16 development rights agreements on behalf of Defendants. Franchise admits that Franchise was  
17 formed in 2012, and further admits that Franchise receives franchise fees and royalties from  
18 franchisees. Except as expressly admitted and alleged herein, Franchise denies the allegations  
19 contained in the corresponding paragraph of the Complaint.

#### 20 **IV. CLAIMS AND CAUSES OF ACTION**

##### 21 **Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)**

22 1. In response to the corresponding paragraph of the Complaint, Franchise hereby  
23 repeats and incorporates herein by reference the responses to the preceding paragraphs, as though  
24 fully set forth herein.

25 2. Franchise denies each and every allegation contained in the corresponding paragraph  
26 of the Complaint.

3. Franchise denies each and every allegation contained in the corresponding paragraph of the Complaint.

4. Franchise denies each and every allegation contained in the corresponding paragraph of the Complaint.

5. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

6. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

**Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.**

7. In response to the corresponding paragraph of the Complaint, Franchise hereby repeats and incorporates herein by reference, the responses to the preceding paragraphs, as though fully set forth herein.

8. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

9. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

10. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

12. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

13. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

### **Count 3: Tortious Interference with Contractual Relations**

14. In response to the corresponding paragraph of the Complaint, Franchise hereby repeats and incorporates herein by reference the responses the preceding paragraphs, as though fully set forth herein.

15. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Franchise lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

### **Count 4: Breach of Contract**

20. Franchise denies that it entered any contractual agreements with MOD. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

21. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

22. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

23. Franchise denies each and every allegation contained in the corresponding paragraph of the Complaint.

24. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining

allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

### **Count 5: Civil Conspiracy**

25. In response to the corresponding paragraph of the Complaint, Franchise hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

26. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

27. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

28. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

### **Count 6: Permanent Injunctive Relief**

29. In response to the corresponding paragraph of the Complaint, Franchise hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

30. Franchise denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to Franchise, Franchise denies those allegations. Franchise lacks sufficient knowledge or information regarding the remaining

1 allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on  
2 that basis, denies all such allegations.

3 31. The allegations contained in the corresponding paragraph of the Complaint are legal  
4 conclusions and require no response from Franchise. To the extent a response is required, Franchise  
5 denies the allegations contained in the corresponding paragraph of the Complaint.

6 32. The allegations contained in the corresponding paragraph of the Complaint are legal  
7 conclusions and require no response from Franchise. To the extent a response is required, Franchise  
8 denies the allegations contained in the corresponding paragraph of the Complaint.

## 9 **V. AFFIRMATIVE DEFENSES**

10 In further answer to the Complaint, Franchise asserts the following separate and affirmative  
11 defenses. Defendant deserves the right to raise additional affirmative defenses as they become  
12 known to it through discovery or investigation.

### 13 **FIRST AFFIRMATIVE DEFENSE**

14 1. Franchise cannot be liable for the damages, if any, alleged in the Complaint and in  
15 each and every cause of action therein because each and every cause of action fails to state a claim  
16 and/or cause of action upon which relief may be granted.

### 17 **SECOND AFFIRMATIVE DEFENSE**

18 2. Franchise alleges that each of MOD's purported claims for relief is frivolous and  
19 unsupported.

### 20 **THIRD AFFIRMATIVE DEFENSE**

21 3. The Complaint, and each and every claim and cause of action alleged therein, is  
22 barred by the doctrine of waiver.

### 23 **FOURTH AFFIRMATIVE DEFENSE**

24 4. All of MOD's purported causes of action against Franchise are barred by the  
25 applicable statutes of limitations.

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FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against Franchise fails because Franchise has complied with all of its legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, Franchise states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than Franchise.

FIFTEENTH AFFIRMATIVE DEFENSE

15. The Complaint, and each and every claim and cause of action alleged therein, is barred because the Court lacks personal jurisdiction over Franchise.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The Complaint, and each and every claim and cause of action allege therein, is barred because venue is improper in this Court.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Franchise alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, Franchise expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

**VI. PRAYER FOR RELIEF**

WHEREFORE, defendant Franchise prays for judgment as follows:

- A. That MOD take nothing by its Complaint and that judgment be entered in favor of LBBP;
- B. That Franchise be awarded its costs and attorneys' fees incurred herein; and
- C. That the Court grant such other relief as it deems just and proper.

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**VII. JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 Franchise demands a trial by jury on all issues so triable.

DATED: December 2, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ JESSICA BROMALL SPARKMAN

Rod S. Berman (CA Bar No. 105444), admitted *pro hac vice*, rberman@jmbm.com

Jessica Bromall Sparkman (CA Bar No. 235017), admitted *pro hac vice*, jbromall@jmbm.com

1900 Avenue of the Stars, 7th Floor

Los Angeles, CA 90067

• Phone: (310) 203-8080 • Fax: (310) 203-0567

By: /s/ R. BROH LANDSMAN

LANDSMAN & FLEMING LLP

R. Broh Landsman (WSBA #9321), broh@LF-law.com

1000 Second Avenue, Suite 3000

Seattle, WA 98104

• Phone: (206) 624-7900 • Fax: (206) 624-7903

*Attorneys for Defendants CARL CHANG, CMCB VENTURES, LLC, PIEOLOGY SPECTRUM, LLC, THE LITTLE BROWN BOX PIZZA, LLC, and PIEOLOGY FRANCHISE, LLC*

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Jeffer Mangels  
Butler & Mitchell LLP